

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FERDINANDO GALLINA,

Petitioner,

v.

JEFFERSON B. SESSIONS III,

Respondent.

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Civ. No. 18-11359 (KM)

**MEMORANDUM AND ORDER
TO SHOW CAUSE**

Petitioner, Ferdinando Gallina, is detained by the United States Marshals Service, at the Essex County Jail, in Newark, New Jersey, under 18 U.S.C. § 3186 and pursuant to extradition proceedings. On July 3, 2018, acting by way of counsel, he filed a petition for writ of habeas corpus, under 28 U.S.C. § 2241, seeking an order staying his extradition and, ultimately, denying his extradition under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (“CAT”). On July 9, 2018, I dismissed the case without prejudice, finding that, as the Secretary of State had not yet issued a decision on extradition, Mr. Gallina did not yet have a claim that was ripe for adjudication. (ECF Nos. 3, 4.) *See Hoxha v. Levi*, 465 F.3d 554, 564–65 (3d Cir. 2006).

Mr. Gallina now states that the Secretary of State has now rendered a decision to proceed with extradition, and he accordingly moves to reopen the case. (ECF Nos. 5, 6.) As the obstacle to jurisdiction noted in the prior opinion—that is, the unripeness of Mr. Gallina’s claim—has been removed, the motion to reopen is granted. Given the great possibility of irreparable injury (and the lack of any showing that extradition proceedings would be completed within 30 days in any event) respondent shall show cause within 30 days why Mr. Gallina’s extradition should not be stayed pending the final resolution of this proceeding. In order to preserve the Court’s

jurisdiction over this pending matter, the Mr. Gallina's extradition is temporarily stayed until the issue of a stay *pendente lite* is fully briefed and decided.

I further review Mr. Gallina's petition under Rule 4 of the Rules Governing § 2254 Cases (applied to this case under Rule 1(b) of the Rules Governing § 2254 cases). In so doing, I see no basis to preliminarily dismiss the petition, and, therefore, respondent is ordered to file an answer. *See* Rules Governing § 2254 Cases, Rules 4 & 5, 28 U.S.C.A. foll. § 2254.

THEREFORE, IT IS this 7th day of September 2018

ORDERED that petitioner's motion to reopen this proceeding, (ECF No. 5), is GRANTED; and it is further

ORDERED that the Clerk of the Court shall REOPEN this proceeding; and it is further

ORDERED that respondent shall, within thirty (30) days of the entry of this Memorandum and Order, SHOW CAUSE why petitioner's extradition should not be stayed pending the final resolution of this proceeding; petitioner may file a reply to respondent's submission within fourteen (14) days of its filing; and it is further

ORDERED that petitioner's extradition is TEMPORARILY STAYED pending the briefing and decision regarding a stay for the duration of this proceeding; and it is further

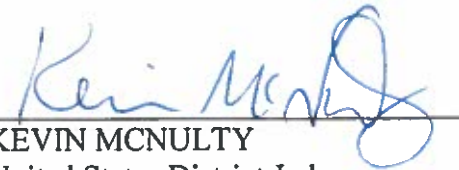
ORDERED that the Clerk shall serve a copy of the petition (ECF No. 1) and this Order upon respondent by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk shall forward a copy of the petition (ECF No. 1) and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that, within forty-five (45) days of the entry of this Order, respondent shall file and serve an answer that (1) responds to the allegations and grounds in the petition and (2) includes all affirmative defenses respondent seeks to invoke; and it is further

ORDERED that respondent shall file and serve with the answer certified copies of all documents necessary to resolve petitioner's claim(s) and affirmative defenses; and it is further

ORDERED that within fourteen (14) days of receipt of the answer, petitioner may file a reply to the answer.



KEVIN MCNULTY
United States District Judge